

# CRS Report for Congress

## Vietnam: Procedural and Jurisdictional Questions Regarding Possible Normalization of U.S. Diplomatic and Economic Relations

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# **VIETNAM: PROCEDURAL AND JURISDICTIONAL QUESTIONS REGARDING POSSIBLE NORMALIZATION OF DIPLOMATIC AND ECONOMIC RELATIONS**

## **SUMMARY**

The Clinton Administration has moved incrementally to begin establishing more normal U.S. economic, consular, diplomatic and other official relations with Vietnam. The U.S. economic embargo was lifted prospectively in February 1994, and it was announced in May 1994 that the two countries would establish consular level liaison offices in each other's capital later this year. In recent years, more senior level U.S. officials, including Members of Congress, have traveled to Vietnam than to any other Southeast Asian country.

The steps have come against the backdrop of a continuing debate in the United States over normalizing relations with Vietnam. Some favor greater U.S. flexibility and forward movement in relations with Vietnam; others oppose such changes until Vietnam meets U.S. conditions, especially accounting more fully for U.S. prisoners of war/missing in action (POW/MIAs) from the Vietnam War. ( For a review of the debate and of the general U.S. policy options for dealing with Vietnam, see Vietnam-U.S. Relations: The Debate Over Normalization, CRS Issue Brief 93081, updated regularly.)

Any significant forward movement in normalizing relations with Vietnam quickly runs into the complicated array of legal and regulatory restrictions currently governing U.S.-Vietnamese relations. These restrictions cover all areas of official relations including economic, consular, diplomatic and cultural interaction. They have often deep historical roots in American opposition to Communist regimes during the Cold War.

A review of the legal and regulatory restrictions and an examination of the American experience in normalizing relations with the Soviet Union and China show that the process of normalization with a Communist country and former military adversary like Vietnam could be protracted. Many of the current restrictions on U.S. relations with Vietnam are mandated by specific statutes referring to Vietnam or broader statutes affecting countries including Vietnam. Some statutes give an element of discretion to the President. Other restrictions on Vietnam have been imposed under general statutory authorities that have been applied to Vietnam by executive decision in response to specific situations or policy goals.

There are a variety of paths that might be followed to normalize relations-- e.g. moving ahead first in economic and cultural areas while holding back diplomatic ties; establishing official political relations first and normalizing economic and cultural ties later; moving ahead in all areas concurrently; etc.. In general, the initiative to move ahead rests mainly with the President, but Congress plays an important role in many areas. Past practice suggests that the President is unlikely to move ahead without support from the legislative branch.

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# **VIETNAM: PROCEDURAL AND JURISDICTIONAL QUESTIONS REGARDING POSSIBLE NORMALIZATION OF U.S. DIPLOMATIC AND ECONOMIC RELATIONS**

## **INTRODUCTION**

The Clinton Administration has moved incrementally to establish more normal U.S. economic, consular, diplomatic and other official relations with Vietnam. The steps have come against the backdrop of a continuing debate in the United States over normalizing relations with Vietnam. Some favor greater U.S. flexibility and forward movement in relations with Vietnam; others oppose such changes until Vietnam meets longstanding U.S. conditions, especially accounting more fully for U.S. prisoners of war/missing in action (POW/MIA) from the Vietnam War.

Increased pressure to ease the American economic and political embargo against Vietnam included efforts in 1993 by France, Japan, and others to break ranks with the U.S. if necessary in order to renew international financial institution aid to Vietnam. American businesses have been attracted by Vietnam's oil potential and its economic reforms and restructuring in recent years.

Forces which have opposed easing the embargo until Vietnam cooperates more fully on POW/MIAs have remained strong. Other factors arguing for caution in any U.S. approach to normalizing relations with Vietnam include the poor state of human rights in Vietnam, the mixed views of Vietnamese-Americans, and the perception held by some that President Clinton has had difficulty addressing this issue because of his anti-war activities during the 1960s.

At its outset, the Clinton Administration endorsed the 4-phase "road map" plan for normalization that was created by the Bush Administration. That plan (see appendix) is premised on Vietnamese cooperation on Cambodia, which has been viewed by many as generally satisfactory in recent years, and on accounting for U.S. POW/MIAs--the area of greatest controversy.

President Clinton announced on July 2, 1993, that the U.S. would no longer oppose resumed international financial institution aid to Vietnam. (Such aid resumed in October 1993.) On September 13, 1993, President Clinton renewed his authority to maintain the U.S. trade embargo on Vietnam, but eased it in December 1993 by allowing U.S. companies to bid on development projects funded by international financial institutions.

On February 3, 1994, President Clinton ordered an end to the U.S. trade embargo on Vietnam. The action came after many months of high-level U.S. interaction with Vietnam, reportedly, achieving "tangible results" in resolving POW/MIA cases, and a January 27, 1994 vote in the Senate urging that the embargo be lifted. The Senate vote was controversial in the House, but the

legislation, part of the State Department authorization bill (H.R. 2333), passed Congress and became law (P.L. 103-236) in April 1994.

On May 26, 1994, Vietnam and the United States announced they would set up liaison offices in Washington and Hanoi, reportedly in two or three months. Secretary of State Warren Christopher was reported planning a visit to Vietnam in July. The United States said full diplomatic relations would require more progress on POW/MIA and human rights issues. Meanwhile, U.S. economic relations still face restrictions on account of frozen assets disputes and the fact that Vietnam remains ineligible for most-favored-nation (MFN) tariff treatment, generalized system of preferences (GSP), Overseas Private Investment Corporation guarantees, Export-Import Bank financing, and other measures.

This report reviews U.S. legal and regulatory restrictions on U.S. relations with Vietnam; addresses specific procedural and jurisdictional questions involved in normalizing U.S. diplomatic, consular, economic or other relations with Vietnam; and presents a range of possible actions the United States could take in key areas of diplomatic and economic policy, if it decided to move ahead to improve relations with Vietnam. This report does not address the pros and cons of possible progress in U.S. relations with Vietnam. Other CRS products address that issue.<sup>1</sup> And it does not cover some conceivable policy changes the United States could adopt in seeking improved relations with Vietnam.

Following this introduction, a background section reviews the development of U.S. relations with Vietnam since the fall of South Vietnam to the Communists in 1975. The next section examines procedural and jurisdictional questions related to the normalization of diplomatic relations. Specifically, this section addresses the following questions: What is the current status of U.S.-Vietnamese political relations? Which branch of the U.S. Government has responsibility for normalizing political relations? What are the different processes involved in establishing government-to-government relations? What are the procedures to establish an interest section or a liaison office? If the United States were to normalize diplomatic relations with Vietnam, what further steps might the United States consider taking?

The following section examines some of the procedural questions related to the possible expansion of economic and commercial relations between the United States and Vietnam. Specific questions addressed include: the current status of U.S.-Vietnamese economic relations; what would be required for the United States to lift restrictions on U.S.-Vietnamese commercial ties; what would be necessary for the United States to implement other U.S. economic programs for Vietnam; and how the U.S. position on multilateral assistance to Vietnam might change with normalized relations.

The final section presents case studies on the different procedures the United States undertook to normalize diplomatic and economic relations with the Soviet Union in 1933, and with the People's Republic of China from 1971 to 1979.

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<sup>1</sup> See CRS Issue Brief 93081 for a discussion and listing of CRS products on this issue.

## **U.S.-VIETNAM RELATIONS SINCE 1975**

U.S.-Vietnam diplomatic and economic relations remained essentially frozen for over a decade beginning in 1975. After the communist victory in South Vietnam in April 1975, the United States ended diplomatic relations with Saigon and subjected all economic relations with South Vietnam to the same restrictions that already applied to North Vietnam. These restrictions consisted principally of a near total embargo on all commercial and financial transactions with Vietnam, and a blocking of all Vietnamese assets in the United States.

The Hanoi government in the 1970s called for talks with the United States on establishing diplomatic relations and demanded that the United States fulfill the provisions of the January 1973 Paris Peace Agreement, including a provision that pledged U.S. postwar aid for Vietnam's reconstruction. The Ford Administration rejected Vietnam's demand for aid and said that there could be no normalization of relations without a full accounting of American POW/MIAs and until Vietnam's longer range intentions in Southeast Asia became more clear. The United States vetoed Vietnam's application for membership in the United Nations on three occasions during 1975-1976.

### **Policy Initiatives during the Carter Administration**

The Carter Administration took several steps to improve relations with Vietnam in 1977, but these efforts were progressively frustrated by growing evidence in 1978 that the Vietnamese government was deliberately expelling hundreds of thousands of its citizens and was making military preparations to invade Cambodia. President Carter sent a commission, led by Leonard Woodcock, to Vietnam in March 1977 to discuss matters affecting mutual interests. Subsequently, the United States disclosed it would no longer veto Vietnam's application for U.N. membership. (On July 20, 1977, the U.N. Security Council recommended by consensus without formal vote that Vietnam be admitted to the United Nations.) The U.S. side proposed that diplomatic relations quickly be established between the United States and Vietnam, after which the United States would lift export and asset controls on Vietnam. But the Vietnamese responded that they would not agree to establish relations or to furnish information on U.S. POW/MIAs until the United States pledged to provide several billion dollars in postwar reconstruction aid. They later modified this position and provided some limited information on MIAs. Needless to say, U.S. aid was not forthcoming.

The U.S. Congress, for its part, responded unfavorably to the Carter Administration initiatives and the Vietnamese demands. Members were particularly opposed to Vietnam's insistence on receiving U.S. aid. In the latter part of 1977, both Houses of Congress went on record as strongly opposing U.S. aid to Vietnam.

Developments in 1978 had a long-term negative effect on U.S.-Vietnamese relations. Vietnam expelled hundreds of thousands of its citizens (many of

Chinese origin) who then became refugees throughout Southeast Asia; aligned itself economically and militarily with the USSR; and invaded Cambodia, deposing the pro-Chinese Khmer Rouge regime and imposing a puppet Cambodian government backed by 200,000 Vietnamese troops. The Carter Administration halted consideration of improved relations with Vietnam. It worked closely with the members of the Association of Southeast Asian Nations (ASEAN) to condemn and contain the Vietnamese expansion and to cope with the influx of refugees from Vietnam (see map).

### **Developments During the Reagan and Bush Administrations**

The Reagan Administration opposed normal relations with Hanoi until there was a verified withdrawal of Vietnamese forces from Cambodia, a position amended in 1985 to include a verified withdrawal in the context of a comprehensive settlement. Administration officials also noted that progress toward normal relations would remain difficult until Vietnam cooperated in obtaining the fullest possible accounting for U.S. personnel listed as prisoners of war/missing in action (POW/MIAs).

As Vietnam withdrew forces from Cambodia and sought a compromise peace settlement there, the Bush Administration decided on July 18, 1990, to seek contacts with Hanoi to reach a peace agreement in Cambodia and end U.S. support for the coalition government. That coalition, the so called Coalition Government of Democratic Kampuchea, was composed of three guerrilla forces, including the Khmer Rouge, and represented Cambodia in the United Nations. In September 1990, the Administration also began official contacts with the Vietnamese-backed government in Phnom Penh.

Regarding the issue of the POW/MIAs, since a visit to Hanoi by a U.S. Presidential delegation led by John Vessey in 1987, Vietnam has returned hundreds of sets of remains said to be those of U.S. MIAs.<sup>2</sup> Some, but not most, were confirmed as those of Americans. From 1974 to 1992, Vietnam returned the remains of over 300 Americans. There is a persistent belief in the United States that Hanoi holds more remains. A Vietnamese refugee testified before Congress in the late 1970s that the remains of several hundred Americans were stored in a Hanoi warehouse mortuary.

Belief that living Americans are still in Vietnamese captivity also has been prominent in recent years amid reports from former U.S. Government officials and others testifying to this possibility. Controversy about U.S. Government handling of POW/MIA issues prompted the Senate in August 1991 to set up a special committee to look into the matter. The committee completed its work and issued a lengthy report in January 1993. The findings clarified many matters but did not end the debate over U.S. and Vietnamese handling of this question and its implications for U.S.-Vietnamese normalization. Hanoi denies

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<sup>2</sup> Department of Defense. See CRS Issue Brief 92101, POWs and MIAs. Status and Accounting Issues, by Robert L. Goldich

that it holds living Americans against their will, or the remains of U.S. MIAs. Americans who do not believe that live POWs are still in Vietnam dispute the veracity of the documents and other evidence used to support that issue. Others feel that some Americans may have been held after the Paris Peace Accord of 1973 but are now dead and/or may have voluntarily remained in Vietnam.

In April 1991, the United States laid out a detailed "road map" (see Appendix) for normalization with Vietnam, welcomed Vietnam's willingness to host a U.S. office in Hanoi to handle POW/MIA affairs, and pledged \$1 million for humanitarian aid (mainly prosthetics) to Vietnam. The U.S. office began operation in mid-1991, and the aid was transferred by the end of FY1991. Also in 1991, the United States eased travel restrictions on Vietnamese diplomats stationed at the United Nations in New York and on U.S. organized travel to Vietnam.

In 1992, Vietnamese cooperation on POW/MIA matters seemed to improve, especially in the area of allowing U.S. investigators access in pursuit of "live sightings" reports. The United States pledged and subsequently paid out \$3 million in humanitarian aid (mainly prosthetics and aid to abandoned children or orphans) for Vietnam; agreed to restore direct telecommunications with Vietnam; agreed to allow U.S. commercial sales to meet basic human needs in Vietnam; and lifted restrictions on projects in Vietnam by U.S. nongovernmental organizations.

This first phase in the "road map" was followed by a second phase, which called for the United States to partially lift its trade embargo once U.N. peacekeepers are well established in Cambodia. The third phase was to see a full lifting of the embargo and an exchange of diplomatic missions 6 months after the U.N. peacekeepers were set up in Cambodia and full diplomatic and economic relations were established. The fourth phase was to come after elections in Cambodia in May 1993.

Given general Vietnamese cooperation on Cambodia and the successful conclusion of elections there in May 1993, the slow and narrow "pace and scope" of U.S. normalization with Vietnam has been contingent mainly on eliciting greater Vietnamese cooperation on POW/MIA issues. U.S. attention to that issue remained strong with, among other things, widespread press coverage of the Presidential campaign of Ross Perot, who had definite views on this subject; the disclosure by Russian President Yeltsin in 1992 that American POWs may have been sent to the U.S.S.R.; an incident in late July 1992 when President Bush was heckled during a speech to POW/MIA relatives; and lengthy hearings by the Senate Committee on POW/MIA Affairs in August and September 1992, where some former Administration officials agreed with the Committee Chairman, Senator Kerry, that Americans were probably left behind in 1973.

Important developments in October 1992 saw U.S. officials, armed with evidence including photographs of extensive Vietnamese archival information on U.S. POW/MIAs, pressing for greater access to such data. Vietnamese representatives agreed. The U.S. pledged and subsequently provided a disaster

assistance grant to Vietnamese flood victims and promised and provided aid to help Vietnam with malaria problems. In April 1992, the U.S. lifted restrictions that barred direct U.S. telephone service to Vietnam. In December, the United States eased some restrictions on U.S. companies with the prospects of doing business in Vietnam.

A third cluster of issues, apart from Cambodia and POW/MIAs, also occupied the Reagan and Bush Administrations. These involved negotiations with Vietnam concerning other humanitarian issues dividing the two countries. Major progress was made. In particular, arrangements were made to:

- facilitate emigration from Vietnam of relatives of Vietnamese-Americans or permanent Vietnamese residents of the United States (the caseload of people in this category was 40,000 in mid-1993);
- regularize the flow of Vietnamese immigrants to the United States and other countries under the so-called Orderly Departure Program managed by the U.N. High Commissioner for Refugees (over 300,000 people had come to the U.S. through this channel as of mid-1993);
- resolve the issue of the estimated several thousand Amerasians (whose fathers are Americans and whose mothers are Vietnamese) who reportedly wish to emigrate from Vietnam to the United States (as of mid-1993, 80,000 people -- Amerasians and relatives -- had come to the U.S. through this channel); and
- obtain release from Vietnamese prison camps and the opportunity to immigrate to the United States of thousands of Vietnamese who worked for the United States in South Vietnam or were otherwise associated with the U.S. war effort there. (As of mid-1993, 72,000 such internees had come to the U.S. through this channel.)

Meanwhile, U.S. policymakers in Congress and the Administration expressed repeatedly their concern about the large numbers of prisoners of conscience said to be in Vietnam, warning that human rights is a central feature of U.S. foreign policy and cannot but affect U.S. policy toward Vietnam.

### **Developments During the Clinton Administration**

In 1993, Clinton Administration spokespersons generally endorsed the road map of the Bush Administration. Press speculation held that the U.S. might feel compelled to ease the U.S. embargo against Vietnam in light of anticipated French and Japanese initiatives at the late April 1993 International Monetary Fund/World Bank consultations in Washington. The U.S. press disclosure in April 1993 of a Soviet document stating that Vietnam held many more U.S. POWs than previously thought occupied an April 18-19, 1993 visit to Hanoi of Presidential Envoy Vessey. In late April, President Clinton and other Administration figures reaffirmed their commitment to a full accounting and to

conditioning U.S. relations with Vietnam on Hanoi's cooperation in resolving this issue. Press reports disclosed that the Administration had succeeded in obtaining a delay, until late June 1993, of international donor consideration of renewed international financial aid to Vietnam.

A high-level U.S. congressional delegation led by Senator Kerry traveled to Vietnam on Memorial Day 1993 and returned with several Members urging forward movement in U.S.-Vietnamese relations. Delegation members met with President Clinton on June 11, 1993.

President Clinton announced on July 2, 1993, that the United States would no longer oppose arrangements supported by France, Japan, and others allowing for resumed international financial institution aid to Vietnam. The U.S. economic embargo on Vietnam would remain in effect. Some veterans groups and their backers in Congress were critical, while some business supporters claimed that the new situation meant that U.S. business would gain nothing from new international lending to Vietnam. Some in Congress supported the move as an appropriate step.

A high-level Clinton Administration delegation visited Hanoi in mid-July 1993 to press for progress on POW/MIAs. It gave Vietnamese leaders U.S. documentary evidence that would help in resolving Vietnamese MIA cases. The delegation also disclosed that U.S. consular officials would now be stationed in Hanoi. The delegation told the Senate Foreign Relations Committee on July 21 that the Clinton Administration did not intend to normalize trade relations with Vietnam until significant progress was made on POW/MIAs. Several Members of Congress visited Vietnam in August.

On September 13, 1993, President Clinton renewed his authority to maintain trade embargoes, including the one on Vietnam, but eased the latter in December by allowing U.S. companies to bid on development projects funded by international financial institutions in Vietnam. Senator Dole on September 15 criticized Clinton's action, while Representative Gibbons and five other members of a House trade subcommittee on September 16, 1993, called for the embargo to be lifted. Also in September, the Administration approved \$3.5 million in U.S. aid to extend two humanitarian programs (prostheses and orphans) in Vietnam; the Senate Foreign Relations Committee rejected an amendment to S. 1467 urging easing the embargo; and the Senate adopted a general resolution on Vietnam normalization while considering H.R. 2295. Subsequent controversy surrounding an investigation into alleged Vietnamese payments to Commerce Secretary Brown caused some Members to call for a halt in moves toward normalization.

On February 3, 1994, President Clinton ordered an end to the U.S. trade embargo on Vietnam. The action came after many months of high-level U.S. interaction with Vietnam, reportedly achieving "tangible results" in resolving POW/MIA cases, and a January 27, 1994 vote in the Senate urging that the embargo be lifted. On February 1, 1994, Commerce Secretary Brown reportedly was notified that he was cleared of charges that he accepted \$700,000 to ease

U.S. sanctions against Vietnam. This allayed some of the concerns in Congress that moves toward normalization with Vietnam should be halted until the charges against Brown were satisfactorily resolved.

The Senate language urging lifting the embargo was attached to authorizing legislation (H.R. 2333). The language was controversial in House deliberations in April 1994, but H.R. 2333 passed Congress; it was signed into law (P.L. 103-236) on April 30, 1994.

The Treasury and Commerce Department regulations implementing the President's February 3 decision were issued on February 7 and 10, 1994, respectively.<sup>3</sup> U.S. economic relations face restrictions on account of frozen assets disputes and the fact that Vietnam remains ineligible for most-favored-nation tariff treatment, the generalized system of preferences, Overseas Private Investment Corporation guarantees, Export-Import Bank financing, and other measures. Talks to resolve the frozen assets issue began in Hanoi on February 28 and are continuing.

On May 26, 1994, Vietnam and the United States announced that official liaison offices would be established reportedly in two or three months.

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<sup>3</sup> Journal of Commerce, February 11, 1994.

## VIETNAM'S SITUATION

American decisionmakers have given top priority attention to Vietnam's handling of the POW/MIA issue in determining the pace and scope of U.S. normalization of relations with Vietnam. At the same time, U.S. incentives for normalization have been influenced by Vietnam's economic reforms, foreign policies and internal political controls. In general, Vietnam's economic and foreign policies have encouraged the U.S. to improve relations, while Hanoi's continued strict political controls have served as a drag on improved relations.

### **Economic Conditions**

Economic reforms continue to make meaningful progress toward greater openness. Market-oriented reforms and greater interaction with the international economy are seen as essential if Vietnam is to avoid the stagnant production, shortages, and limited famine that characterized past, more orthodox communist economic policies. (The most graphic illustration of Vietnam's backwardness remains its \$230 per capita gross national product -- among the lowest levels in the world.) The government has given farmers greater control over what they produce, abandoned central state planning, cut subsidies to state enterprises, reformed the price system, and introduced a liberal foreign investment code. Positive results in economic growth have developed. The economy is expected to grow by 8% in 1994, and by 10% in subsequent years.<sup>4</sup> A big problem remains foreign aid, which used to come from the Soviet bloc. Hanoi was particularly pleased with Japan's November 1992 announcement of resumed aid (\$370 million) after a hiatus of 14 years. World Bank, International Monetary Fund and Asian Development Bank aid resumed in 1993. Due to political and administrative obstacles, it remains unclear whether Vietnam will become an emerging "Asian Tiger" or remain a risky location for foreign investors.

### **Foreign and Defense Policy**

For many years, a major impediment to Vietnam's development was the strong international opposition to Vietnam's invasion and occupation of Cambodia. Faced with a cutoff of much aid from the Soviet bloc, the Vietnamese in the 1990s increased their flexibility on a Cambodian settlement, moved to accommodate China on sensitive issues, and stepped up progress on the POW/MIA and other humanitarian issues with the United States. Vietnamese officials have voiced their frustration that the United States and others are "slow" in ending economic restrictions that limit Vietnam's ability to obtain international financial assistance, investment and trading opportunities needed for economic modernization.

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<sup>4</sup> World Bank, Country Briefing Note, Vietnam.

## **Political Trends**

Vietnam's experiment with political reform in the late 1980s lagged far behind economic changes and has largely been superseded by an orthodox drive to maintain tight political control. Reform-minded leaders came to the fore following the Vietnamese landmark Sixth Communist Party Congress in December 1986. "Old Guard" leaders were retired and the new General Secretary set about to revitalize the ossified political structure and stagnant economy through reforms and experiments, reductions in central control, and curbs on the party's power over aspects of state and society.

The reformers' standing remained uncertain as many senior-level leaders harbored concerns about the diminution of their control. The political crisis in China after the June 1989 Tiananmen massacre and the collapse of communism in Europe caused these leaders to reassert their views against the reformers. The Seventh Party Congress, held in Hanoi in June 1991, saw a leadership emerge that was dominated by relatively younger political hard-liners anxious to reassert party prerogatives and avoid political changes incompatible with Communist Party control. A new constitution, which went into effect on April 18, 1992, confirmed the political monopoly of the Communist party. Restrictive procedures for a National Assembly election in July 1992 effectively eliminated candidates not approved by the government. Complaints about human rights abuses (such as arbitrary arrest and torture) remain a feature of international commentary on Vietnam.

## **QUESTIONS INVOLVED IN NORMALIZING U.S.-VIETNAMESE DIPLOMATIC RELATIONS**

### **What is the Current Status of U.S.-Vietnamese Political Relations?**

The United States does not have normal diplomatic relations with the Socialist Republic of Vietnam (SRV). The United States had not recognized the predecessor to the Socialist Republic of Vietnam -- the Democratic Republic of Vietnam (the Communist government in North Vietnam). The United States did have full relations with the noncommunist South Vietnamese government until it fell to the Communists in 1975.

The United States does recognize the Socialist Republic of Vietnam as a state in the international law sense. Moreover, the United States has acknowledged that the government of the SRV exercises effective control within Vietnam, and U.S. officials have dealt routinely with SRV authorities on a wide range of issues of mutual interest.

In July 1989, President Bush stated as U.S. policy that the United States would not normalize diplomatic relations with the Socialist Republic of Vietnam until a comprehensive settlement has been achieved in Cambodia that would include genuine power sharing with the noncommunist Cambodians led by Prince Sihanouk, as well as an internationally verified withdrawal of Vietnamese troops. He added that as a "practical matter," the pace and scope of U.S. normalization would be directly affected by the degree of Hanoi's cooperation on POW/MIA and other humanitarian issues. The Clinton Administration generally has followed these broad guidelines. As Vietnamese cooperation on Cambodia has been widely viewed as satisfactory in recent years and other humanitarian issues have been largely settled, the pace and scope of U.S. normalization with Vietnam has been determined mainly by U.S. assessment of Vietnamese cooperation on the POW/MIA issue.

The absence of formal diplomatic relations has not prevented a range of extensive bilateral official contacts in Vietnam, the U.S. and elsewhere over POW/MIA and other issues. In recent years, more senior level U.S. administration and congressional officials have traveled to Vietnam than to any other Southeast Asian country. Since 1991, a U.S. office to handle POW/MIA matters has been operating in Hanoi; American officials in recent years have worked actively throughout the country investigating crash sites and other areas where information about POW/MIA cases might be found. The U.S. and Vietnam reportedly plan to establish liaison offices in Hanoi and Washington later this year.

### **Which Branch of the U.S. Government Has Responsibility for Normalizing Political Relations?**

The Constitution divides the foreign relations powers between the executive and legislative branches of the government. For example, the Constitution gives the President the power to send and receive ambassadors, while Congress has the power to regulate commerce with foreign nations, to define offenses against the law of nations, and to declare war. The President and the Senate share the power to make treaties and appoint ambassadors.

Although the Constitution does not ascribe the powers of recognizing states and governments to any particular branch of the Government, the President traditionally exercises such authority. The legislative branch of the Government exercises little direct influence over the normalization of relations. Congress, however, controls appropriations that are necessary to implement the President's plan to establish relations.

### **What Are the Different Processes Involved in Establishing Government-to-Government Relations?**

There are general aspects to the process of establishing relations between governments including: 1) recognition of a sovereign state, and 2) establishment of diplomatic relations. Governments can choose to recognize a state -- such recognition is accorded to an entity having a defined area and population under the control of a government that has the capacity to engage in foreign relations. Recognition of a state, however, does not necessarily mean that a government may recognize the government of that state. Oftentimes, political considerations influence a government's willingness to establish or reestablish diplomatic relations with the foreign state.

### **What Are the Procedures to Establish an Interest Section? A Liaison Office?**

In certain cases, the United States has maintained interest sections or liaison offices in countries with which it has no diplomatic relations. In the case of Cuba, for instance, the United States conducts business with Cuba through the U.S. Interests Section in Havana. The Interests Section is officially part of the Swiss Embassy, but is located in the former U.S. Embassy building. The Cuban Interests Section in Washington operates through the Swiss Embassy, although it is located in the former Cuban Embassy building. The State Department was responsible for negotiating the agreement with the Government of Cuba that led to the creation of the respective interests sections.

The United States maintained a liaison office in Beijing from 1973 until it established diplomatic relations with the People's Republic of China (PRC) in

1979.<sup>5</sup> Until 1979, the United States officially had relations with the government of the Republic of China -- located in Taiwan. Upon establishing diplomatic relations with the PRC in 1979, the United States broke official relations with Taiwan.

Currently, American commercial and cultural interaction with the people of Taiwan is facilitated through the American Institute in Taiwan (AIT) -- a nongovernmental entity staffed largely by U.S. State Department and other officials who are temporarily separated from the U.S. Government. The AIT was established under the authority of the Taiwan Relations Act (P.L. 96-8, 22 U.S.C. 3301-3316). Section 7(a) of the Act authorizes personnel at the AIT to perform notarial, conservator, and consular services. Section 10(c) of the Act provides the means to grant diplomatic status to the Coordination Council for North American Affairs (the Taiwanese liaison office in Washington), and to its personnel.

### **If the United States Were to Normalize Diplomatic Relations with Vietnam, What Further Steps Might the United States Consider Taking?**

#### **Cultural and Educational Exchanges**

The United States has no official cultural, scientific, or educational exchange programs with Vietnam and has only very limited unofficial exchanges. Some Vietnamese scholars work in the United States courtesy of a Fulbright Program which is managed by the American Council of Learned Societies. If the United States were interested in pursuing such programs with Vietnam it might look to the U.S.-Chinese experience as a model.

In January 1979, the United States and China signed a Cultural Agreement that has established a basis for long-term official exchange. According to the agreement, the U.S. Information Agency is charged with managing the U.S.-China cultural exchange program. The agreement, however, governs only official, government-to-government contacts, and neither precludes nor covers other U.S.-China cultural exchanges that may be privately sponsored. As has occurred under many official U.S.-China agreements, costs of the official cultural exchange programs have been reciprocal, with each country covering the costs of its own involvement.

#### **Travel Restrictions**

The United States has no restrictions against U.S. citizens travelling to Vietnam. Because the United States has no consular establishment in Vietnam

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<sup>5</sup>The U.S. passed legislation to allow for the establishing of liaison offices with China. Such legislation is said not to be needed in the case of liaison offices with Vietnam as both Vietnam and the U.S. are parties to multilateral conventions governing diplomatic and consular relations.

at this time, the State Department is able to provide only limited assistance to U.S. citizens travelling there.

### **Refugee Resettlement Agreements**

The United States and Vietnam have had talks and reached agreements relating to the Orderly Departure Program (ODP) -- a program that facilitates the emigration of people from Vietnam with family or other contacts in the United States. In July 1989, the United States and Vietnam initialed an ad referendum agreement concerning the ODP, which dealt with a resettlement program for released reeducation center detainees. The agreement has been formally agreed to and implemented.

In June 1989, the United States was also a participant in the International Conference on Indo-Chinese Refugees, held in Geneva. The countries participating in the conference endorsed a Comprehensive Plan of Action to curb the flow of people from Vietnam. The United States and Vietnam were parties to a series of meetings and agreements on implementing the Comprehensive Plan of Action.

## NORMALIZING U.S. COMMERCIAL RELATIONS WITH VIETNAM

### Background

For almost three decades, Vietnam — or, at least, a large part of it — was one of the few countries whose economic relations with the United States have recently been subject to a regime of U.S. sanctions of the most comprehensive and restrictive kind. In addition to an embargo on U.S. commercial and financial transactions with Vietnam and blocking of Vietnamese assets in the United States, numerous other types of transactions (various other aspects of merchandise trade, export credits, private investments) were prohibited, limited, or subject to discriminatory practices by specific provisions of law and/or regulation. Most of these sanctions were originally imposed against North Vietnam in the context of the Vietnam conflict and expanded to include South Vietnam after its takeover by North Vietnam in late April 1975; the earliest have been in force since 1951.

After some marginal moves toward normalization of relations, beginning in 1991, the most comprehensive and restrictive part of these sanctions — the embargo and the blocking of assets — was lifted prospectively in February 1994, while other, more selective sanctions remain in force.

Apart from the remaining sanctions, U.S. economic relations with Vietnam are adversely affected by Vietnam's situation in general international relations as well as by other bilateral problems with the United States. Among the former are Vietnam's nonparticipation in certain international entities (General Agreement on Tariffs and Trade, Multifiber Arrangement), which to some extent also directly affect bilateral U.S.-Vietnam economic relations; the latter include lack of diplomatic relations with the United States, the as yet uncompensated nationalization of U.S. property in Vietnam, and the remaining unresolved questions of American prisoners of war and missing in action (POW/MIAs) in the Vietnam conflict.

The measures whereby the existing restrictions on U.S.-Vietnamese economic relations can be removed or mitigated depend primarily on the type of authority under which they have been imposed. Some are mandated by specific statute applying only to Vietnam, others by broader statutes affecting a group of countries (e.g. "Communist," or other similarly described countries) which include Vietnam either specifically or by implication. These may, however, contain an element of executive discretion, generally subject to statutory conditions for its use. Finally, restrictions have been imposed under general statutory authorities that have been applied to Vietnam by executive decision in response to specific situations or policy goals.

Consequently, certain sanctions can be lifted only by the enactment of measures repealing or modifying the applicable statutory mandate, others can be revoked by executive action as authorized by and subject to the conditions,

if any, imposed by the relevant statute, and others still might be repealed solely at executive discretion. All sanctions, of course, can be removed by specific legislation.

This section of the report discusses restrictions at present in force on U.S. commercial relations with Vietnam, their brief history, and means for their removal or modification.

### **Blocked Assets**

The blocking of Vietnamese assets<sup>6</sup> in the United States is the remnant of the comprehensive embargo on commercial and financial transactions imposed on North Vietnam on May 5, 1964 (29 F.R. 6010) during the escalation of the Vietnam conflict, by adding that country to the list of countries subject to the already existing Foreign Assets Control Regulations (31 C.F.R. Part 500) and expanding them with provisions specifically affecting North Vietnam. The embargo was extended in the same way to South Vietnam on April 30, 1975 (40 F.R. 19202), after the takeover of South Vietnam by North Vietnam.

These regulations were put into effect — and subsequently occasionally modified in minor ways — by the Department of the Treasury or its Office of Foreign Assets Control (OFAC) first under the "national emergency" provision of section 5(b) of the Trading With the Enemy Act (TWEA), which was replaced in late 1977 by the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 - 1706). The exercise of the authorities applied under the TWEA and continued under the IEEPA (among them the Vietnamese embargo and blocking of assets) has been continued in effect by means of annual Presidential determinations that such extensions are in the national interest of the United States. The latest such determination extended Vietnamese sanctions through September 14, 1994 (Presidential Determination No. 93-38, September 13, 1993, 58 F.R. 51209). (Of course, President Clinton decided to lift the embargo on Vietnam on February 3, 1994.)

At the time of its latest extension, the Vietnamese embargo consisted — with marginal exemptions — of a virtually total ban on merchandise trade and financial transactions between the two countries, and blocking of Vietnamese assets in the United States. Several exemptions were added following the announcement, in April 1991, by the Bush Administration of a "road map" for the normalization of U.S.-Vietnam relations. Thus, American travel service providers were permitted, with some restrictions, to arrange tourist and business travel to Vietnam (56 F.R. 65992; December 20, 1991); telecommunications transactions of U.S. common carriers involving Vietnam were authorized (57 F.R. 17855; April 28, 1992); nongovernmental organizations were authorized to conduct humanitarian projects in Vietnam, and provision of goods and services

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<sup>6</sup>The value of blocked Vietnamese assets in the United States, consisting mostly of bank accounts but including also the value of the Vietnamese embassy building in Washington, is estimated at \$325 to \$330 million.

to Vietnam to meet basic human needs became possible by case-by-case specific licenses (57 F.R. 20765; May 15, 1992); American businesses were permitted to enter into executory contracts with Vietnamese firms, the performance of which was contingent on the eventual lifting of the embargo (57 F.R. 62230; December 30, 1992); specific licenses authorizing on a case-by-basis the provision of training and orientation services to Vietnamese nationals were made available (58 F.R. 63083); and U.S. persons were authorized to participate in development projects of international institutions in Vietnam (58 F.R. 68529; December 28, 1993).

On February 3, 1994, President Clinton announced the lifting of the embargo itself because "tangible, significant progress has been made in all ... areas" related to the POW/MIA question and as "the best way to ensure cooperation from Vietnam and to continue getting the information Americans want on POW's and MIA's."<sup>7</sup> While no Presidential document (Proclamation, or Executive Order) was issued the embargo was lifted with effect at 5:05 p.m. EST on February 3, 1994 (the time of the President's announcement), by a notice of the Office of Foreign Assets Control (59 F.R. 5696; February 7, 1994). The lifting was only prospective, applying to future transactions, and did not affect assets already blocked. Subsequently (as of May 18, 1994), the unblocking action was extended somewhat retroactively to apply also to Vietnamese funds received through wire transfers or checks after December 31, 1989 (59 F.R. 26601; May 23, 1994).

The regulatory mechanics of the still existing restrictions (blocked assets) are administered by the Office of Foreign Assets Control (OFAC) and consist principally of a requirement that transactions which are not authorized by a regulation or general license (a blanket permit) must be subject to review and specific licensing on a case-by-case basis.

The still remaining restrictions can be further relaxed or revoked — as was the embargo — by executive action.

### **U.S. Imports**

After the lifting of the trade embargo, two sanctions, of lesser impact but nonetheless important, still remain in force with respect to U.S. imports from Vietnam: the denial of the nondiscriminatory (most-favored-nation; MFN) status to Vietnam in its trade with the United States, and Vietnam's ineligibility for the U.S. generalized system of preference.

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<sup>7</sup>*Weekly Compilation of Presidential Documents*, v. 30, no. 5, February 7, 1994, p. 205, 206.

### **Most-Favored-Nation (MFN) Status**

Lack of Vietnam's MFN status in its trade with the United States means, mainly, that the United States assesses customs duties on imports from Vietnam essentially at the high rates enacted by the protectionist Tariff Act of 1930 rather than at the substantially lower rates resulting from concessions granted by the United States in subsequent negotiations with other countries. Because of long-standing U.S. statutory policy, dating back to 1934 and at present stated in section 126 of the Trade Act of 1974 (19 U.S.C. 2136), and, in most cases, also obligations under various international trade agreements, concessionary rates granted in negotiations to any country are applied as a matter of general policy to imports from all U.S. trading partners.

This policy was changed by section 5 of the Trade Agreements Extension Act of 1951 (65 Stat. 73), which required the President to suspend MFN status of most communist countries as a sanction against their support of North Korea and in its armed conflict with the United States. The suspension was implemented generally by Presidential Proclamation 2935 of August 1, 1951 (16 F.R. 7635) and specifically for "any part of ... Vietnam, which may be under Communist domination or control" by Trade Agreement Letter of the same date with effect on September 1, 1951 (16 F.R. 7637). This language remained in the form of a regulation until it was incorporated into the Tariff Schedules of the United States, a completely revised and restructured form of the United States basic tariff document, enacted in 1962, which in General Headnote 3(e) contained a list of "Communist countries" denied MFN status.

Two events, relevant for Vietnam's MFN status, took place in early 1975. First, on January 3, 1975, the Trade Act of 1974 was enacted, which, in section 401<sup>8</sup> (19 U.S.C. 2431), mandated continued denial of MFN status to any country denied such status at the time of its enactment, except as otherwise provided in Title IV of the Act. The other, based on the — still original — language of the MFN denial provision in General Headnote 3(e) and without any specific implementing document, automatically extended the suspension of MFN status to South Vietnam after its takeover by North Vietnam in late April 1975. The original language was not modified until a new thorough revision of the tariff document (Harmonized Tariff Schedule of the United States - HTS; 19 U.S.C. 1202; not codified) was enacted by section 1204 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3004) and entered into force on January 1, 1989. In its General Headnote 3(b), no longer referring to "Communist countries," the HTS listed Vietnam as such as an entity subject to the denial of MFN status.

This development of Vietnam's MFN situation may have created a problem for the restoration of Vietnam's MFN status, and may result in the need for specific legislation for this purpose. The mandatory continuation in force of the denial of MFN status to certain countries in section 401 applies to those

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<sup>8</sup>Unless otherwise stated, further references to titles or sections of statutes in this part of the report are those to the Trade Act of 1974.

countries which did not have such status on the day of its enactment. With respect to Vietnam this would mean "any part ... which may be under Communist domination or control" on that date, in effect, North Vietnam. Section 401 also provides as the sole means for the restoration of MFN status to such countries the mechanism provided for in several other provisions of Title IV. Hence, although all Vietnam is denied MFN status by HTS General Headnote 3(b), its restoration under the existing legislation, technically, can be implemented only with respect to former North Vietnam.

Restoration of MFN status to all of Vietnam would appear to require the enactment of legislation of one of two types: either (1) specifically making the restoration provisions of Title IV applicable to all Vietnam, or, (2) less likely, granting outright to Vietnam regular (unconditional and unlimited) MFN status.<sup>9</sup> Either measure would have to be considered under regular legislative procedure.

In the event that the restoration takes place under Title IV, the procedure, applicable by law to nonmarket economy (NME) countries (of which Vietnam is one), requires compliance with the provisions of the freedom-of-emigration (usually referred to as Jackson-Vanik) amendment (sec. 402; 19 U.S.C. 2432), and the conclusion of a bilateral trade agreement and its implementation by enactment (sec. 405; 19 U.S.C. 2435). The requirements of the Jackson-Vanik amendment can be fulfilled by either (1) a Presidential determination that Vietnam is in full compliance with the freedom-of-emigration requirements of the amendment, or (2) a waiver of such compliance by the President if he has determined that such waiver will substantially promote the objectives of the amendment. The determination of full compliance must be renewed semiannually and is subject, at year-end, to disapproval by a joint resolution, enacted under a special fast-track procedure (sec. 152; 19 U.S.C. 2192). Waivers of full compliance are issued under the waiver authority originally granted in 1975, and are automatically renewable, under specified conditions, every mid-year; annual renewals of the waiver authority also are subject to joint resolutions of disapproval (which may target individual countries), enacted by a fast-track procedure applicable only to such disapprovals (sec. 153; 19 U.S.C. 2193). The initial issuance of a waiver does not require congressional approval nor is it subject to congressional disapproval.

The trade agreement required by law must contain a reciprocal grant of the MFN status as well as several safeguard provisions. Its implementation must be approved by the enactment of a joint resolution (sec. 407(c)(1); 19 U.S.C. 2437(c)(1)), considered under the same fast-track procedure (but without being subject to the same detailed procedural conditions) as other trade agreements (e.g., the Uruguay Round agreements). By its own terms, such trade agreement remains in force for three-year periods but may be renewed virtually

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<sup>9</sup>Both legislative approaches have been initiated to resolve a similar problem involving Cambodia: H.R. 4530 would extend to Cambodia regular MFN status, while H.R. 4656 and S. 2103 would make restoration of MFN status to Cambodia subject to Title IV procedure.

automatically. Such renewals are not subject to congressional approval or disapproval. It is doubtful, however, that a trade agreement would be concluded with Vietnam, unless diplomatic relations have first been established between the two countries.

Closely tied in with the provisions of section 401 are those of section 409 (19 U.S.C. 2439), which bar the extension of MFN status to an NME country which denies or places serious obstacles to a citizen's right to emigrate to join a close relative in the United States. Affecting the same countries as section 402, this provision does not apply to any country with respect to which a Jackson-Vanik waiver is in effect.

A related provision, contained in section 403 of the Trade Act of 1974 (19 U.S.C. 2433) and potentially affecting Vietnam, denies the MFN status to any NME country which the President determines is not cooperating with the United States in accounting for, repatriating, or returning the remains of U.S. personnel missing in action in Southeast Asia, as long as such determination remains in force. Such determination, however, has not been made with respect to Vietnam.

The United States also accords MFN status as a reciprocal obligation under the General Agreement on Tariffs and Trade to the parties to the Agreement. In the event that Vietnam, which is not now a party to the GATT, were to accede to the GATT -- or to its institutional successor, the World Trade Organization (WTO), if it is established sometime in 1995 -- the United States could avoid its MFN obligation under the GATT or the WTO toward Vietnam by invoking, respectively, GATT Article XXXV or WTO Article XIII. Either provision, of which the latter is somewhat less restrictive than the former, allows reciprocal nonapplication of the GATT or, respectively, the Uruguay Round agreements between a current and a newly acceding party to the GATT or the WTO if either does not consent to it.<sup>10</sup>

### **Generalized System of Preferences**

Vietnam also is denied the status of "beneficiary developing country" (BDC) under the U.S. generalized system of preferences (GSP) (secs. 501 - 505; 19 U.S.C. 2641 - 2645), which permits a substantial array of products of countries designated as BDCs to be imported into the United States under certain conditions free of duty. Although South Vietnam had been so designated before the GSP went into effect, it was omitted from the list of designated BDCs contained in Executive Order 11888 (40 F.R. 55276), which initially implemented the GSP effective January 1, 1976. North Vietnam has never been designated a BDC. Hence, imports from Vietnam do not qualify for duty-free treatment under the GSP. The denial of the BDC status to Vietnam is evident

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<sup>10</sup>For additional information on Vietnam's status with respect to the GATT, see section on Other international aspects, below.

from Vietnam's absence from the list of designated BDCs contained in General Note 3(c)(ii)(A) of the HTS.

Designation of a country as a BDC is subject to several conditions of which at least three would clearly appear to be relevant with respect to Vietnam (sec. 502(b); 19 U.S.C. 2462(b)). Designation is denied, generally, to a country that has not settled or is not in the process of settling expropriation or nationalization claims against it made by U.S. citizens; does not afford internationally recognized worker rights to its workers; or, in the case of a communist country, does not have MFN status with the United States, is not a party to the General Agreement on Tariffs and Trade (GATT) and member of the International Monetary Fund (IMF), and is controlled by international communism. While compliance with the claims settlement, and worker rights conditions may be waived by the President if he determines that the designation of a country as a BDC is in the national economic interest of the United States, the communist-country restriction may not. The claims settlement provision, in any event, does not appear to present a serious obstacle to Vietnam's designation as a BDC, because relevant discussions have already taken place with Vietnam.<sup>11</sup>

As to the conditions applicable solely to communist countries, Vietnam is a member of the IMF and, arguably, could be considered as not being controlled by international communism, an aspect to be definitively determined at the time of the eventual designation. Vietnam has not acceded to the GATT nor has yet applied for accession; it has the status of an observer in the sessions of the Contracting Parties, and is applying for such status in the General Council.

### **U.S. Exports**

The United States controls commercial exports to foreign countries, primarily for national security and/or foreign policy reasons, under the authority of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401-2420). Regulations to control U.S. exports of general merchandise and technology (Export Administration Regulations; 15 C.F.R. 769-799.2) are promulgated and administered under statutory policies and guidelines by the Bureau of Export Administration of the Department of Commerce. The scope of controls applicable to exports to any country depends on the country group to which a country is assigned, where the degree of restrictiveness is reflected in the range of articles that require an individual "validated" license for each shipment (or group of related shipments) to a certain destination. Validated licenses are not required for exports that may take place under a general license, that is, a regulation which, in effect, gives an advance blanket permission for a specific type of export. The assignment of countries to their groups and the application of specific licensing requirements is done by the Bureau of Export Administration.

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<sup>11</sup>For more detail on U.S. claims against Vietnam, see section on Other International Aspects.

rior to the lifting of the embargo, Vietnam was one of only three countries<sup>12</sup> in Country Group Z, the group subject to the heaviest restrictions, amounting to a virtually total embargo on exports. The mechanics of the embargo consisted of the requirement that virtually all exports to group Z countries must be approved by validated licenses, and of the stated general policy to deny all applications for them (15 C.F.R. 785.1). This policy was relaxed somewhat with the establishment of a general license G-NGO, which authorized nongovernmental, nonprofit organizations to export donated articles for small-scale humanitarian projects in Vietnam (57 F.R. 31658; July 17, 1992), and of a general license GVN, which authorized the shipment to Vietnam of minimum quantities of articles required for the activities in support of executory contracts already licensed by the OFAC (see section on Blocked Assets) (58 F.R. 47052; September 7, 1993).

When the embargo was lifted, the scope of U.S. controls on exports to Vietnam was substantially reduced by reassigning Vietnam from Country Group Z to Country Group Y (59 F.R. 6524), the latter encompassing most of the countries of the former Warsaw Pact (Supplement No. 1 to 15 C.F.R. Part 770). Country Group Y control policy requires validated export licenses primarily for articles that were subject to international security controls of the recently disbanded Coordinating Committee for Multilateral Export Controls (COCOM), and for certain additional articles the control of whose exports is considered by the United States important to its national security.

Since changes in the U.S. export control policy can be made by executive action by the Bureau of Export Administration within the statutory guidelines, further substantial relaxation of controls on U.S. exports to Vietnam is possible without congressional involvement. The next logical step in the normalization of export controls would be in reassigning Vietnam to Country Group V, which would place Vietnam at the lowest level of control restrictiveness.

In the matter of commercial military exports, section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to designate those items that shall be considered as defense articles and defense services (the U.S. Munitions List) and to promulgate regulations for the export of such articles and services. The President delegated this authority to the Secretary of State who has issued the International Traffic in Arms Regulations (ITAR) (22 C.F.R. 121-130). Section 126.1 of the ITAR establishes the policy of the United States to deny licenses for export to or import from 12 (some, by now, former) communist countries (the former Soviet Union is still counted as one country), including Vietnam. To allow commercial arms sales to Vietnam, at the least, this regulation would have to be modified to allow the licensing of munitions trade between the United States and Vietnam.

In the case of government-to-government military sales, section 3(a)(1) of the Arms Export Control Act (22 U.S.C. 2753(a)(1)) prohibits the U.S. Government from selling or leasing defense articles or services unless the

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<sup>12</sup>Cuba, North Korea, and Vietnam.

President finds that the furnishing of such articles or services to a country or international organization would strengthen the security of the United States and promote world peace.

### **Exports from Foreign Countries**

Exports from foreign countries to Vietnam are to some extent affected by Transaction Control Regulations (31 C.F.R. 505), which, with some exceptions, prohibit a U.S. person to engage in any transaction in connection with the sale or purchase in any foreign country, and shipment to any country of the former Sino-Soviet bloc (or its successors), including Vietnam, of any merchandise included in the list of articles at one time subject to international controls of the now defunct Coordinating Committee for Multilateral Export Controls (COCOM), or prohibited by U.S. munitions or nuclear control provisions. This prohibition, originally promulgated in August 1954 and now maintained in force under the same authority and administered in the same way as Foreign Assets Control Regulations (see section on Blocked Assets), was applied to North Vietnam on February 6, 1965 (30 F.R. 1284) and to South Vietnam on April 20, 1976 (41 F.R. 16556). While shipments originating in 23 Western countries have been excepted from this prohibition, this exception does not apply to shipments to Vietnam (and North Korea). These provisions are administered and can be modified by the Office of Foreign Assets Control.

### **Export Financing**

Financing of exports to Vietnam through export credits is restricted or affected in several ways. Participation in any U.S. Government program that extends export credits or export credit guarantees or insurance is prohibited to any nonmarket economy country — hence also to Vietnam — unless the freedom-of-emigration requirements of the Jackson-Vanik amendment are fulfilled. The principal programs affected by this restriction are export credits and credit guarantees or insurance of the Export-Import Bank of the United States, and export credits of the Commodity Credit Corporation.

Moreover, the Export-Import Bank of the United States is specifically prohibited by its own organic law (sec. 2(b)(2), Export-Import Bank Act of 1945; 12 U.S.C. 635(b)(2)) from engaging in any type of credit transaction (credit, credit guarantee or insurance) for the benefit of any "Marxist-Leninist" country, among them the Socialist Republic of Vietnam, unless the President determines that such transactions are in the national interest. A separate determination is needed for any Eximbank loan of \$50 million or more. No determination has been made with respect to Vietnam.

The prohibition of Vietnam's access to U.S. Government export credits and export credit guarantees or insurance contained in the Jackson-Vanik amendment can be removed by the President in either of the two ways provided for in that amendment for compliance with its requirements (Presidential

determination of full compliance, or a waiver) for the restoration of the MFN status (see p. 5). Although functionally related, restoration of a country's access to U.S. Government financial facilities is not contingent on the country's having been granted MFN status,<sup>13</sup> nor is it subject to congressional approval. The removal of this prohibition, however, would not affect the specific prohibition of such transactions contained in the Export-Import Bank Act itself. Extension of Export-Import Bank credits and credit guarantees and insurance to Vietnam, now unavailable to Vietnam as one of the Marxist-Leninist countries under 12 U.S.C. 635(b)(2), could be authorized if the President determined (1) that Vietnam has ceased to be a Marxist-Leninist country, *or* (2) that such transactions are in the national interest.

### **Private Foreign Investment**

While there are, after the lifting of the embargo, no restrictions on U.S. private investment in Vietnam, such investment is, nevertheless, somewhat discouraged by two provisions affecting the investors' ability to use the facilities of the Overseas Private Investment Corporation (OPIC), a U.S. Government agency insuring or guaranteeing American private investments in developing countries. One is the prohibition, contained in the Jackson-Vanik amendment, of investment guarantees for investments in nonmarket economy countries that do not comply with the requirements of that amendment<sup>14</sup> (see the preceding paragraph for the implications of the Jackson-Vanik amendment); the other consists of restrictions placed on OPIC operations in communist countries by virtue of OPIC legislation being part of foreign assistance legislation (see the Foreign Assistance section for a discussion of OPIC activities).

### **Other International Aspects**

Apart from its implications for the Hickenlooper amendment (see section on Foreign Assistance, below) and GSP eligibility (see section on the generalized system of preferences, above), the issue of unsettled claims by U.S. citizens and firms against Vietnam for their property located in Vietnam that was expropriated by the Vietnamese government may pose a practical obstacle to normal economic relations. The situation, however, is in the process of being resolved. Under an amendment to the International Claims Settlement Act of 1949, added as its Title VII (22 U.S.C. 1645-1645o) by P.L. 96-606 (December 28, 1980), the Foreign Claims Settlement Commission received and adjudicated the

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<sup>13</sup>As a past example: a Jackson-Vanik waiver was issued on December 29, 1990 (E.O. 12740, 56 F.R. 355) for the then still existing Soviet Union, to a substantial extent in order to allow Soviet Union access to U.S. export credit facilities, but the Soviet Union was dissolved (in December 1991) before the procedure for extending the MFN status to it could be completed.

<sup>14</sup>The implications of the Jackson-Vanik amendment for OPIC operations are the same as for Eximbank's operations, mentioned in the preceding paragraph.

validity of claims by U.S. nationals against Vietnam arising from losses due to nationalization or other expropriations of properties in Vietnam on or after April 29, 1975. Of the claims against Vietnam filed with the U.S. Foreign Claims Settlement Commission, 342 have been denied, while awards have been adjudicated in 192 cases with an aggregate value of the principal of about \$99.5 million. While the law sets out the procedure for the payment of claim awards, it authorizes no appropriation of funds for this purpose. The awards would be paid from the sums realized under the claims settlement agreement that would need to be concluded between the United States and Vietnam and is at present the subject of bilateral exploration.

Lack of diplomatic relations between the United States and Vietnam also prevents or hampers the negotiation and conclusion of any bilateral economic agreements (e.g., trade, investment guaranty) between the two countries. Vietnam's nonparticipation in the General Agreement on Tariffs and Trade and the Multifiber Arrangement prevents Vietnam from enjoying the benefits that participants in those compacts are obligated to extend (with exceptions) to each other.

Vietnam's accession to the General Agreement on Tariffs and Trade (GATT) (if and when the Uruguay Round agreements enter into force, the accession would presumably have to be to the World Trade Organization) would have to be approved by the GATT Council (or WTO Ministerial Conference) after Vietnam's application (which thus far has not been made) and a detailed examination of Vietnam's trade regime and recommendation by a working party, a procedure usually taking several years. If Vietnam acceded to the GATT or the WTO, the United States could avoid its obligations under the respective agreement (e.g., the granting of the MFN treatment) toward Vietnam by taking recourse to GATT Article XXXV (or Article XIII of the WTO Agreement), which allows nonapplication of the Agreement between two parties if at the time one of them accedes to the Agreement either party does not consent to such application.

While Vietnam is not a party to the Multifiber Arrangement (MFA), which provides ground rules for the international trade in textiles, it could become one on terms to be agreed between it and the countries participating in the MFA. But even if it did not, the United States could conclude with it a bilateral textile trade agreement under the provisions of section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854), assuming that there are no other obstacles to the conclusion of such agreement.

## **WHAT STEPS COULD THE UNITED STATES TAKE IF IT WERE TO IMPLEMENT OTHER U.S. ECONOMIC SUPPORT PROGRAMS FOR VIETNAM?**

The U.S. Government administers such economic support programs as foreign assistance -- both economic and military -- the Overseas Private Investment Corporation (OPIC), the Trade and Development Agency (TDA), and P.L. 480 food assistance, as well as contributes to international financial institutions and other multilateral aid agencies. Over the past few years, the United States has taken limited steps to extend aid to Vietnam, but most restrictions prohibiting such assistance remain in place.<sup>15</sup> Congress, however, is nearing completion of legislation (H.R. 4426, Foreign Operations Appropriations, 1995) that would remove two legal impediments to extending bilateral assistance to Vietnam. If enacted and signed into law, as expected, the President would gain substantial discretionary authority to initiate direct aid to Hanoi, although U.S. assistance would still be subject to general foreign aid conditions that apply to all countries. If the United States were to fully normalize relations with Hanoi, it could establish some, all, or none of these economic support programs with the Vietnamese Government. The normalization of relations with Vietnam does not require the U.S. Government to implement any of these programs. The United States has diplomatic relations with many countries that do not receive any assistance through these programs.

### **Bilateral Foreign Assistance**

Several impediments have stood in the way of a U.S. bilateral foreign aid program in Vietnam. Prohibitions on foreign economic and military assistance to Vietnam exist in the Foreign Assistance Act of 1961 (P.L. 87-195), the Department of State Appropriations Authorization Act of 1973 (P.L. 93-126), the Arms Export Control Act (P.L. 90-629), and in the Foreign Operations Appropriations Act, 1994 (P.L. 103-87).<sup>16</sup> The Foreign Assistance Act of 1961,

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<sup>15</sup> The U.S. Agency for International Development has provided assistance, channelled through non-governmental organizations operating in Vietnam, under two humanitarian programs: the War Victims Fund and the Displaced Children and Orphans Fund. Legal authorities for both programs allow such assistance "notwithstanding" other legislative prohibitions that might exist.

<sup>16</sup> The Foreign Assistance Act of 1961 authorizes such programs as development assistance, the Economic Support Fund (ESF), the grant Military Assistance Program (MAP), the International Military Education and Training (IMET) program, international narcotics control assistance, disaster assistance, and anti-terrorism training. The Arms Export Control Act authorizes programs to provide grants and credits for military sales to foreign countries under the Foreign Military Sales Financing (FMS) program. Annual or biennial State Department authorization acts do not normally authorize foreign aid programs. They can, however, as in the case of the 1973 statute, include limitations and prohibitions on U.S. assistance. The Foreign Operations Appropriations Act

the 1973 State Department Act, and the Arms Export Control Act are permanent laws. The Foreign Operations Appropriations Act, however, is a temporary statute and applies only to programs in FY1994. In the case of provisions cited below that affect Vietnam, most have been continued for a number of years in the annual appropriation measures. Although some of these are likely to be reenacted for FY1995, removal of two prohibitions regarding aid to Vietnam are expected to be approved by Congress.

Listed below are the general provisions that prohibit bilateral U.S. foreign assistance to Vietnam.

- Section 620(f) of the Foreign Assistance Act of 1961 prohibits the United States from providing assistance to any communist country, unless the President determines that: (A) such assistance is vital to the security of the United States; (B) the recipient country is not controlled by the international communist conspiracy; and (C) such assistance will further promote the independence of the recipient country from international communism. Alternatively, the President may exempt a country from this restriction if he determines and reports to Congress that such an exemption would be important to the national interest of the United States. Vietnam is on the list of communist countries. Under this provision, assistance to Vietnam could occur with Presidential certification.
- The Hickenlooper Amendment -- section 620(e) of the Foreign Assistance Act of 1961 -- requires the President to suspend assistance to the government of any country that has nationalized or expropriated or seized ownership or control of property owned by any U.S. citizen or by any corporation, partnership, or association not less than 50 percent beneficially owned by U.S. citizens. Such suspension shall continue until the President is satisfied that appropriate steps are being taken to resolve the situation. The provisions of this subsection shall not be waived with respect to any country unless the President determines and certifies to Congress that such a waiver is important to the national interests of the United States. Although Vietnam is among those countries that have expropriated U.S.-owned property, the executive branch has not chosen to invoke the Hickenlooper Amendment against Vietnam. Reportedly, the U.S. and Vietnam have discussed and agreed in principle on the approximate \$230 million in private American claims against Hanoi.
- The Brooke Amendment -- section 512 of the Foreign Operations Appropriations Act, 1994 -- prohibits the United States from expending funds appropriated by that Act to provide assistance to any country that is in default during a period in excess of one calendar year in payment to the United States of principal or interest on any U.S. foreign assistance loan. Since May 29, 1976, Vietnam has been in violation of the Brooke

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provides annual funding for foreign aid programs authorized by these and other acts.

Amendment. Pursuant to this provision, if Vietnam does not repay its debt, assistance to Vietnam could occur only through legislative action.

- Section 620(q) of the Foreign Assistance Act of 1961 includes a provision similar to the Brooke Amendment. Section 620(q) prohibits any assistance to a country that is in default during a period of six months in payment to the United States of principal or interest on any U.S. foreign assistance loan, unless the President determines that assistance to such country is in the national interest and notifies Congress of such determination. Vietnam has been held in violation of this provision since November 29, 1975. Under Section 620(q), assistance to Vietnam could occur with presidential certification.
- Section 507 of the Foreign Operations Appropriations Act, 1994 prohibits the United States from expending funds appropriated by this Act to provide any direct assistance or reparations to a series of countries. Vietnam is among those countries. For FY1995, however, a House and Senate conference committee has recommended removing Vietnam from this list of countries. Congress is expected to pass the bill (H.R. 4426) in early August.
- Section 13 of the Department of State Appropriation Authorization Act of 1973 prohibits the use of any appropriated funds, notwithstanding any other law, for providing direct or indirect assistance to North Vietnam, unless specifically authorized by Congress. The Administration has interpreted the reference to North Vietnam to apply to all of Vietnam. Initiation of aid to Vietnam could come only after repeal of section 13. The Executive branch has requested its repeal on several occasions -- and Congress is in the final stages of enacting legislation (H.R. 4426) that would delete section 13.

Beyond the options noted above to remove these prohibitions through legislative action or specific waivers, the President could use his special authority under section 614 of the Foreign Assistance Act of 1961 (22 U.S.C. 2364). The section 614 authority permits the broad waiver of most statutory prohibitions on foreign assistance and allows the President to provide assistance -- up to certain limits -- to a country, notwithstanding any other provision of the Act and other foreign policy acts, when the President determines that to do so is important to the security interest of the United States, and so notifies Congress in writing. The section 614 authority effectively gives the President the power to override prohibitions in the Foreign Assistance Act of 1961, the Arms Export Control Act, and a range of laws authorizing and appropriating funds for U.S. foreign policy.

Because of the far-reaching nature of the section 614 authority, the President consults with, and provides a written policy justification to, the House Committee on Foreign Affairs, the Senate Committee on Foreign Relations, and the House and Senate Appropriations Subcommittees on Foreign Operations prior to exercising his authority. In practice, past Presidents have used the authority sparingly and with close consultation with Congress.

## **Other Assistance and Financial Programs**

Beyond these general prohibitions, listed below are prohibitions related to specific U.S. foreign assistance and financial programs.

***Overseas Private Investment Corporation (OPIC):*** The purpose of the Overseas Private Investment Corporation (OPIC) is to provide political risk insurance for U.S. private capital investment in economic development activities in developing countries.

The authorizing legislation for OPIC is within the Foreign Assistance Act of 1961. In most cases, the general prohibitions discussed above in the bilateral foreign assistance section would also apply to assistance provided through OPIC. Section 239(f) of the Act, however, might provide a model for enabling OPIC activities in Vietnam. Section 239(f) states that: "Except for the provisions of this title (Part I, Chapter 2, Title IV), no other provision of this or any other law shall be construed to prohibit the operation in Yugoslavia, Poland, Hungary, or any other East European country, or the People's Republic of China of the programs authorized by this title, if the President determines that the operation of such program in such country is important to the national interest." Establishing a similar provision for Vietnam could occur only through legislative action.

The President would also have to remove, with appropriate waivers or determinations, the prohibitions on U.S. Government investment guarantees contained in the Jackson-Vanik amendment (removable by the same procedure that applies to the restoration of the access to export credit facilities under the same amendment).

***Trade and Development Agency (TDA):*** The purpose of the Trade and Development Agency (TDA) is to promote U.S. business involvement in infrastructure and industrial projects in developing countries. TDA funds feasibility studies, consultancies, and training activities carried out by American firms that both enhance U.S. export opportunities and contribute to economic growth in the developing world.

The authorizing legislation for TDA is also within the Foreign Assistance Act of 1961. The Secretary of State has the authority to determine which countries are "friendly," for purposes of this program. If the Secretary chose to he could make such a determination for Vietnam.

***P.L. 480 Food Assistance:*** The Agricultural Trade Development and Assistance Act of 1954 ("PL 480") (P.L. 83-480) authorizes the transfer, on both a grant and loan basis, of U.S. surplus agricultural commodities to developing and least developed countries facing foreign exchange shortages, difficulties in purchasing food needs through commercial channels, food deficits and high levels of malnutrition, and emergency food requirements. Emergency aid needs may be extended notwithstanding any other limitation or prohibition. So long as Vietnam meets these requirements, presumably it could be declared eligible

for U.S. food assistance, although no programs are planned at the present time. Congress repealed in 1990 an explicit prohibition on P.L. 480 assistance to Vietnam, as well as general exclusions for communist countries.

### **Multilateral Aid**

Normalization of diplomatic relations would not necessarily directly affect the U.S. position on multilateral aid to Vietnam. In other words, there is no statutory mandate that requires the United States to vote against multilateral loans to, or contribute to organizations assisting, countries with which we have no diplomatic relations; nor is the United States required to support multilateral assistance to countries with which we have reestablished relations. However, by virtue of its membership in and contributions to various international institutions for economic assistance and stabilization, the United States is faced with the situation of providing assistance indirectly to communist countries and other nations with which problems exist that also are members.

During the past year, the United States has taken steps that have helped remove obstacles to renewed multilateral lending to Vietnam. Nevertheless, some legal and policy restrictions remain that limit full U.S. support of international institution loans to Hanoi. Since the late 1970s until mid-1973, the United States worked to oppose lending to Vietnam by multilateral development banks (MDBs) and the International Monetary Fund (IMF). Following termination of lending by 1978 of these international financial institutions, Vietnam fell into arrears in its loan repayments to the Asian Development Bank (ADB) and the IMF, making it ineligible for further loans. In early 1993, France and Japan proposed to loan Vietnam sufficient funds to clear the ADB and IMF arrears and pave the way for renewed multilateral lending. On July 2, 1993, President Clinton announced that the United States would not oppose other countries from assisting Vietnam clear its arrears.

This action by the President, however, did not on its own result in subsequent U.S. support for new lending by international institutions. In the case of the International Monetary Fund (IMF),<sup>17</sup> section 43 of the Bretton Woods Agreement Act (22 U.S.C. 286aa) -- commonly referred to as the "Gramm Amendment" -- requires the Secretary of the Treasury to instruct the U.S. Executive Director of the IMF to "actively oppose" the use of any IMF credit facility by a "Communist dictatorship" (not further defined, but presumably including Vietnam) unless the Secretary of the Treasury, upon request, at least 21 days before the IMF vote on approving such use, certifies that the loan:

- 1) provides the basis for correcting the balance of payments difficulties and restoring a sustainable balance of payments position;

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<sup>17</sup> The IMF Board of Governors replaced the Republic of Vietnam (South Vietnam) with the Socialist Republic of Vietnam effective September 15, 1976.

2) would reduce the severe constraints on labor and capital mobility or other highly inefficient labor and capital supply rigidities and advances market-oriented forces in that country; and

3) is in the best economic interest of the majority of people in that country.

The Administration has not considered utilizing this certification procedure. In October 1993, the United States did not support (by abstaining) two IMF loans to Vietnam. Should the U.S. wish to support future IMF lending to Vietnam, Congress would have to repeal the Gramm amendment or the Administration would have to issue the required certification.

In the case of the MDBs, current U.S. policy calls on the U.S. Executive Director to each of the multilateral lending institutions to abstain on loans to Vietnam, except for projects supporting basic human needs (BHN) of the Vietnamese people. Of the 10 loans issued since October 1993 by the World Bank's International Development Association (IDA) and the Asian Development Bank, the United States has supported five that maintained a BHN-character, including projects for primary education, agricultural rehabilitation, irrigation and flood projection, and water supply rehabilitation. The Administration states that U.S. votes on future MDB loans to Vietnam will be governed by the economic and technical merits of the proposed project.

In order to take these limited steps in support of MDB lending to Vietnam, the Administration has had to waive a prohibition on "indirect" U.S. aid to selected countries, including Vietnam. Section 523 of the Foreign Operations Appropriations Act, 1994 (P.L. 103-87) prohibits any indirect U.S. assistance or reparations to a series of countries, including Vietnam, unless the President certifies that withholding these funds would be contrary to the national interest. The President most recently made this certification through Presidential Determination No. 94-4 of November 19, 1993, 58 F.R. 63519. The prohibition on "indirect assistance" refers to multilateral aid to these countries and effectively prohibits U.S. contributions to any banks or organizations providing funds to these countries, absent a Presidential determination. For FY 1995, however, a House and Senate conference committee has recommended removing Vietnam from this list of countries. Congress is expected to pass the bill (H.R. 4425) in early August.

Current U.S. law can also potentially impact U.S. contributions to international organizations that assist Vietnam. Section 516 of the Foreign Operations Appropriations Act, 1994, states that at the discretion of the President, the U.S. may withhold a share of its voluntary contribution to various U.N. and other international organizations in proportion to the amount of aid such organizations might have provided to communist countries listed under Section 620(f) of the Foreign Assistance Act of 1961. See the discussion on section 620(f) above for details on how the President could remove Vietnam from the section 620(f) list.

## WHAT PROCEDURES DID THE U.S. FOLLOW IN NORMALIZING RELATIONS WITH THE USSR AND THE PEOPLE'S REPUBLIC OF CHINA?

There have been two major instances in which the U.S. Government normalized relations with foreign governments several years after their actual ascendancy to power. In 1933 -- 16 years after the Bolshevik Revolution -- the United States normalized relations with the Soviet Union. In 1979, the United States normalized relations with the People's Republic of China -- 30 years after the Communist victory over the Nationalist forces in 1949. These cases provide some background on how the United States has proceeded in normalizing relations with other countries and may highlight possible implications if the United States were to follow the same path with the Socialist Republic of Vietnam.

### **Soviet Union (USSR)<sup>18</sup>**

In 1917, President Woodrow Wilson responded to the Bolshevik Revolution by refusing to recognize the new Soviet government. Although the Soviet Union expressed interest in normalizing relations with the United States in the years following the Bolshevik Revolution, U.S. hostility towards communism, in general, and the Soviet government, in particular, precluded the United States from recognizing the Soviet government.

In the early 1930s, however, the United States found it increasingly difficult to ignore the permanence of the Soviet regime as well as the potential economic and diplomatic benefits of recognition. Despite the lack of formal relations between the governments, commercial ties between the countries increased somewhat in the early 1930s. In addition, U.S. concerns over the growing power of Japan in Asia and of Nazi Germany in Europe caused the United States to reconsider its stand on recognition of the Soviet Union -- especially since some officials felt that the Soviets might offer a strategic counterbalance to Japanese and German expansionism.

President Franklin Roosevelt was the key U.S. actor in the normalization process with the Soviet Union. As a first step, in May 1933, President Roosevelt included Soviet President Mikhail Kalinin among the European leaders he called upon to attend the London Economic Conference. In the spring and summer of 1933, the President also sent U.S. envoys to speak unofficially with Soviet officials on the issue of normalization. At the same time that he was taking these actions, the President worked to build public and congressional support for recognition. There was a growing consensus within the executive branch and Congress that normalization should be contingent upon prior Soviet

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<sup>18</sup> The primary source for the following information is: Maddux, Thomas R. *Years of Estrangement: American Relations with the Soviet Union, 1933-1941*. (Tallahassee, FL: University Presses of Florida, 1980).

agreement to repay outstanding debts to the United States, and to cease its support of propaganda and subversive activities against the United States.

In November 1933, President Roosevelt ordered U.S. officials to prepare for negotiations with the Soviet Foreign Ministry on establishing relations between the two countries. State Department officials recommended to the President that three major issues be settled before the normalization of diplomatic relations: protection of the rights of Americans in Russia, severing of all Soviet ties with communist activity in the United States, and settlement of Russian debts to the United States. Moscow, on the other hand, preferred to address these issues after relations were normalized -- U.S. negotiators, however, refused.

After several days of unsuccessful negotiations between State Department and Soviet officials, President Roosevelt and the Soviet Union's chief negotiator, Soviet Commissar Maxim Litvinov, met directly to address the three issues. The President and Litvinov readily agreed on a guarantee of freedom of worship and conscience for American citizens in the Soviet Union. The final agreement also required Moscow to sever its ties with the American Communist Party and other communist-controlled organizations in the United States. The Soviet Union also made a pledge not to permit the formation or residence on its territory of any organization or group which aimed to overthrow or prepare for the overthrow of, or bring about by force of a change in, the political or social order of the United States.

Resolving the debt issue, however, was more problematic. In the end, the President agreed to a compromise accord that called on the Soviets to repay a portion of the amount due from an outstanding debt to the United States, inherited from the previous Czarist regime. It appears that at the time of the negotiations, President Roosevelt viewed the resolution of the debt issue as a less significant barrier to normalized relations than did the State Department. The two negotiators appeared to pay little attention to administrative details, which later led to disagreements between the two countries over the interpretation of the agreement.

In the end, after appearing to have reached an understanding on these issues, President Roosevelt and Commissar Litvinov signed an agreement that same day which normalized relations between the two countries after 16 years of nonrecognition.

### **People's Republic of China (PRC)<sup>19</sup>**

In 1949, the Nationalist government of Chiang Kai-shek fell to the communists on mainland China and relocated to Taiwan. The United States

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<sup>19</sup> The primary source for the following information is: Congressional Quarterly. China: U.S. Policy since 1945. (Washington, 1980).

continued diplomatic relations with the Nationalists, while refusing to recognize the government of the People's Republic of China (PRC).

Despite the hostility between the United States and the PRC, the two countries did maintain face-to-face communications from 1954 to 1972 through so-called ambassadorial talks conducted by their respective ambassadors in, at first, Switzerland and, later, Poland. Although little was accomplished through these communications, some officials contended that these discussions helped to prevent misunderstandings that could have exacerbated such regional issues as U.S. military support for Taiwan and the U.S. involvement in the Vietnam War.

In 1969 and 1970, the Nixon Administration made several cautious moves toward increasing U.S. contacts with the PRC, by lifting certain travel and trade restrictions. In 1971, the State Department announced it had terminated all restrictions on travel to China. In addition, the United States effectively lifted the U.S. trade embargo against China and reduced some export controls on goods to China.

In July 1971, Henry Kissinger made a secret trip to Beijing to lay the groundwork for future Sino-American relations. The two parties reached agreement on the following issues: 1) that Taiwan was part of China; 2) that the political future of South Vietnam should be decided by the Vietnamese; and 3) that all Asian disputes should be settled by peaceful means. At the time, the Chinese also extended an invitation to President Nixon to visit China. President Nixon later announced that he would travel to China in early 1972.

On February 14, 1972 -- the week before his departure for the PRC -- President Nixon ordered the reassignment of China from country Group Z to country Group Y with respect to U.S. export control policy. In effect, this move placed China on the same level of U.S. trade restrictions as the Soviet Union and the Warsaw Pact countries. Furthermore, President Nixon directed the Treasury Department to remove the requirement that U.S.-controlled firms abroad obtain Treasury approval for the export of strategic goods and foreign technology to the PRC.

On February 21, 1972, President Nixon arrived in China for a week of consultations with Chinese officials. At the end of the visit, President Nixon and Chinese Premier Zhou Enlai released a joint statement -- known as the Shanghai communique -- agreeing that progress toward "the normalization of relations" between the two sides was "in the interests of all countries."

In February 1973, in an effort to regularize bilateral contact and lay the groundwork for normal diplomatic relations, the United States and the PRC agreed to open non-diplomatic liaison offices in each other's capitals. In April 1973, Congress approved a bill (P.L. 93-22) that extended diplomatic immunities and privileges to the staff of the liaison office of the PRC, when it opened the following month.

In October 1978, President Carter signed the Agricultural Trade Act of 1978 (P.L. 95-501) that contained a provision allowing the Commodity Credit Corporation to extend short-term (up to three years) credit to the PRC. Previously, the PRC had been ineligible for such credit under the provisions of the Jackson-Vanik Amendment to the 1974 Trade Act.

In December 1978, President Carter announced that beginning on January 1, 1979, the United States and the PRC would establish diplomatic relations, and the United States would discontinue official relations with Taiwan. The exchange of ambassadors would take place in March 1979. The terms of the agreement called on the United States: 1) to recognize the PRC as the sole legitimate government of China, 2) to acknowledge that Taiwan was part of China, and 3) to end all official governmental relations with Taiwan and withdraw its troops from the island within four months. At the same time, the United States still could maintain and develop its existing nongovernmental relations with Taiwan on a "people to people" basis.

The final agreement involved concessions by both sides. The agreement allowed the United States to end its Mutual Defense Treaty with Taiwan one year later, which was stipulated within the original terms of the treaty. Second, Beijing did not contradict the unilateral statement by Washington that the United States "expects" the Taiwan issue to be resolved peacefully. Third, despite its objections, Beijing proceeded with normalization despite the announced intentions of the United States to continue to supply Taiwan with "defensive" weapons. For its part, Washington accepted Beijing's terms for normalization without any formal assurance that it would not use force to take Taiwan.

In January 1979, Vice Premier Deng Xiaoping visited the United States and signed a series of agreements that: 1) provided for the establishment of consulates in both countries, 2) established an overall science and technology agreement, 3) authorized U.S. aid for building a nuclear accelerator in China, 4) entitled the PRC to launch a communications satellite through NASA, 5) established a cultural exchange agreement, and 6) provided for student exchanges.

In March 1979, the U.S. Treasury negotiated an agreement with the Chinese Finance Ministry whereby claims by U.S. citizens would be settled at 41 cents on the dollar. China would thus pay \$80 million to the U.S. Treasury in settlement of U.S. claims totalling \$197 million. The United States agreed to release, in October 1979, \$80 million of Chinese assets that were frozen during the Korean War. The agreement enabled Chinese trade with the United States to proceed without fear of seizure of goods.

In July 1979, the United States and the PRC signed a three-year self-renewable trade agreement that established the framework for normal commercial relations between the two countries and paved the way for the United States to grant the PRC most-favored-nation (MFN) status, within the requirements of the freedom of emigration (Jackson-Vanik) amendment of the

Trade Act of 1974. The trade agreement was signed, however, only after the United States imposed unilateral quotas on textile imports from China. The agreement entered into force on February 1, 1980, after the President, on October 23, 1979, granted a Jackson-Vanik waiver and the Congress, on January 24, 1980, approved the agreement. The textile trade agreement was signed after prolonged negotiations on September 17, 1980, retroactive to January 1, 1980, and subsequently extended several times.

The Presidential waiver removed the Jackson-Vanik amendment obstacle to access to the full range of U.S. Government export credits for China. In addition, the specific ban on extending Export-Import Bank credits to Communist countries in section 2(b)(2) of the Export-Import Bank Act was rescinded by a Presidential determination of national interest (45 F.R. 26017, April 17, 1980).

The waiver removed one obstacle to China's access to the facilities of the Overseas Private Investment Corporation. The other obstacle was the general prohibition on foreign aid to Communist countries in section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)), which then provided for a national interest waiver only under very restrictive conditions, which were unlikely to qualify China for the waiver. Therefore, an amendment to an existing statute was enacted (P.L. 96-327; 94 Stat. 1026; August 8, 1980) which, in effect, authorized OPIC operations in China if the President determined it to be important to the national interest (22 U.S.C. 2199(f)). Such determination (No. 80-25, 45 F.R. 54299) was made on August 8, 1980, and an investment guaranty agreement was signed with China and entered into force on October 30, 1980.

Meanwhile a review of export control policies by the United States as well as by the Coordinating Committee on Multilateral Export Controls (COCOM) suggested the appropriateness of a further relaxation of U.S. policy on exports that required COCOM approval to China compared to those to the Warsaw Pact countries. Because of this differentiation, China was reassigned in April 1980 to a unique country group (group P). The policy of approving licenses for export to China of dual-use (economic and military) commodities, with specified exceptions, was instituted. In the following year, the United States changed its policy on exports to generally approving dual-use items to China to the technological level -- approximately to twice the threshold requiring COCOM approval. Finally, in November 1983, China was reassigned to country group V -- containing the majority of U.S. trading partners outside the Western Hemisphere -- although exports to China of certain sensitive strategic dual-use commodities that would normally be licensed for export to group V may require extended review or denial.

As to its multilateral economic relations, the PRC became a member of the International Monetary Fund on April 17, 1980, replacing therein the Republic of China (Taiwan), acceded to the Multifiber Arrangement on January 18, 1984, became an observer in the GATT in 1982 and is currently being examined for GATT membership following the filing of an application in 1986 to resume the China seat in the GATT, abandoned in 1950 by the Republic of China.

## Appendix. The U.S. Reported "Road Map" Proposal For Normalization with Vietnam

### PHASE I

Began with October 1991 signing of peace agreement on Cambodia.

Vietnam is to:

- Sign the Cambodian peace accord and help to persuade the Phnom Penh regime to sign
- Take needed steps to resolve quickly "last known alive" POW discrepancy cases, live sighting reports, and return American remains with an eye toward settling the POW/MIA cases in Indochina in 2 years
- Allow those Vietnamese detainees previously affiliated with the U.S. to exit by means of the Orderly Departure Program (ODP).

U.S. is to:

- Lift 25-mile travel ban on Vietnamese diplomats in New York
- Begin bilateral talks on normalizing diplomatic relations
- Permit U.S. organized travel to Vietnam
- Liberalize U.S. economic relations with Cambodia
- State publicly U.S. official concerns regarding genocide in Cambodia.

### PHASE II

Begins after Phase I and once U.N. peacekeepers are well established in Cambodia.

Vietnam is to:

- Continue to support Paris agreement and help persuade Phnom Penh to continue to support it
- Continue progress on POW/MIA issues begun in Phase I.

U.S. is to:

- Send high-level delegation to Hanoi for talks on normalization of relations
- Allow U.S. telecommunication links with Vietnam
- Allow signing of U.S. contracts with Vietnam
- Allow U.S. commercial transactions meeting basic human needs in Vietnam
- Work with others to help Vietnam eliminate arrears to international financial institutions (IFI)
- Allow U.S. firms to open commercial offices in Vietnam
- Lift all restrictions on U.S. non-governmental organization projects in Vietnam.

### PHASE III

Begins once U.N. procedures and Cambodian settlement process are well in place (i.e., cantonment of competing factional forces is complete and demobilization has begun).

Vietnam is to:

- Continue its support and encourage Phnom Penh's support of Cambodia peace agreement
- Withdraw all Vietnamese forces/military advisers from Cambodia
- Resolve last known alive discrepancy cases and repatriate U.S. remains readily available to Vietnam.

U.S. is to:

- Open diplomatic liaison office in Hanoi and invite Vietnam to establish one in Washington
- Fully lift trade embargo
- Support International Financial Institutions (IFI) aid meeting basic human needs in Vietnam.

**PHASE IV**

Begins once a U.N.-certified free election takes place in Cambodia; a Cambodian National Assembly is formed and is writing a new constitution; demobilization of factional forces specified in the 1991 accord has occurred; and the objectives of the U.S.-Vietnam 2-year effort to resolve POW/MIA issues have been achieved.

Vietnam is to:

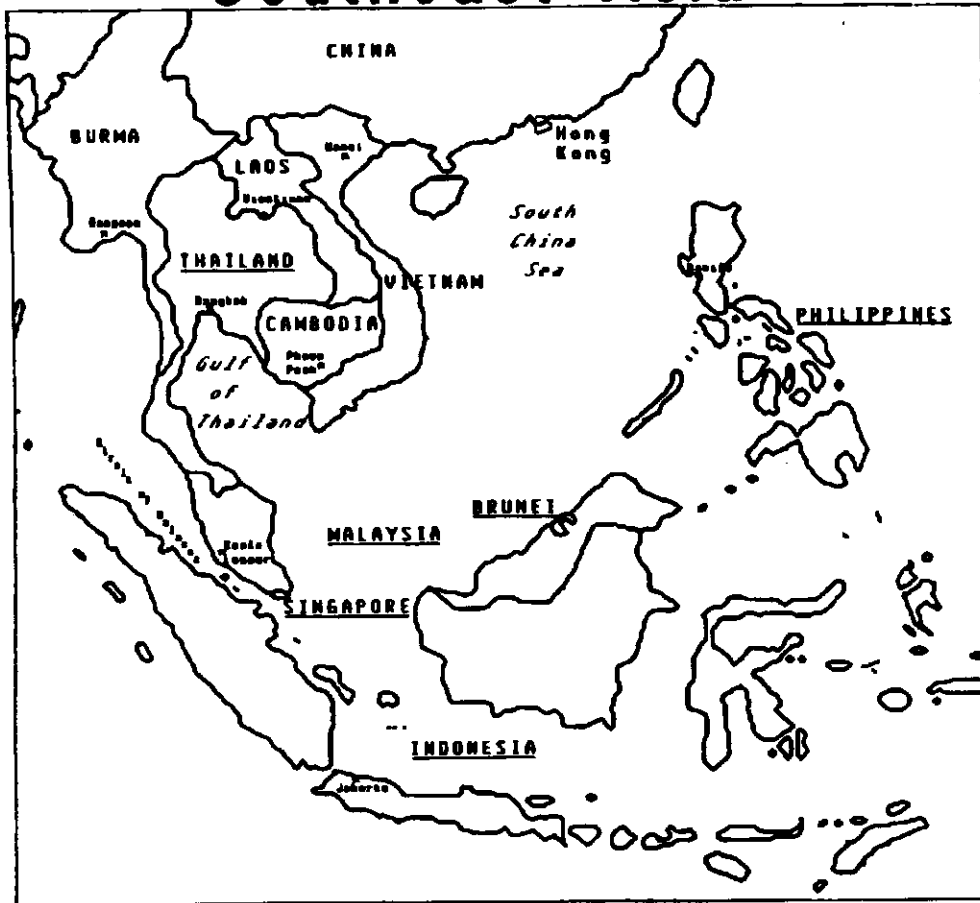
[No additional requirements at this stage.]

U.S. is to:

- Establish ambassadorial-level diplomatic relations with Vietnam
- Consider granting most-favored-nation status to Vietnamese trade
- Favorably consider IFI assistance for non-basic human needs projects in Vietnam.

Source: *New York Times*, Oct. 24, 1991, p. 1; *Indochina Digest*, April 12, 1991, p. 2; interviews, Washington, D.C., February 1992.

## Southeast Asia



Names of members of the Association of Southeast Asian Nations (ASEAN) appear underlined on the map above.